

Prior law (R.S. 32:1268.1(B)) provided for mandatory manufacture repurchase on marine products when a marine dealer ceased to sell that product.

New law repeals prior law.

New law (R.S. 32:1268.3) provides that if any marine dealer enters into a franchise with a manufacturer, distributor, or wholesaler wherein the marine dealer agrees to maintain an inventory of marine products or repair parts, the manufacturer, distributor, or wholesaler shall not terminate or fail to renew such franchise unless there is a breach of the franchise by the marine dealer and until 90 days after notice of such intention to terminate, including breach of the franchise, has been sent by certified mail, return receipt requested, or commercial delivery service with verification of receipt, to the marine dealer, and the marine dealer has failed to correct the breach within such period.

New law provides that if the franchise is terminated as a result of any action by the marine dealer and the manufacturer, distributor, or wholesaler has not given due cause, as provided in this Section, for termination of such franchise, the manufacturer, distributor, or wholesaler shall not be required to repurchase the inventory; however, if the franchise is terminated as a result of any action by the marine dealer and the manufacturer, distributor, or wholesaler has given the marine dealer due cause to terminate the franchise, the manufacturer, distributor, or wholesaler shall be required to repurchase that inventory previously purchased from them, including any new and unused marines products of the current and immediate prior model or program year and new and unused parts.

New law provides that it shall be unlawful for the manufacturer, wholesaler, or distributor, without due cause and pursuant to its own initiating action, to terminate or fail to renew a franchise, unless the manufacturer, distributor, or wholesaler repurchases the new and unused inventory as provided for in new law.

New law prohibits a marine dealer with due cause and pursuant to the marine dealer's own initiating action to terminate or fail to renew a franchise with a manufacturer, wholesaler, or distributor, and the manufacturer, wholesaler, or distributor shall repurchase inventory. To determine what constitutes due cause for a marine dealer to terminate or fail to renew a franchise, the following factors regarding the manufacturer, wholesaler, distributor or representative of one of the so named shall include whether the manufacturer, wholesaler, distributor, or one of the so named:

- (1) Has made a material misrepresentation in accepting or acting under the franchise.
- (2) Has engaged in an unfair business practice.
- (3) Has engaged in conduct which is injurious or detrimental to public welfare.
- (4) Has failed to comply with any applicable Section of this Chapter.
- (5) Has been convicted of a crime, the effect of which would be detrimental to the marine dealership or dealer.
- (6) Has violated the Louisiana marine dealers area of responsibility.
- (7) Has failed to operate in the normal course of business for thirty consecutive days.
- (8) Has failed to comply with the terms of the franchise with the marine dealer.
- (9) Has materially misrepresented the performance or fitness for sale or use of a product line or products covered by the franchise.

New law provides that if a manufacturer, wholesaler, or distributor does not intend to renew a franchise, the manufacturer, wholesaler, or distributor shall give the marine dealer 90 days written notice prior to the effective date by certified mail, return receipt requested, or commercial delivery service with verification of receipt.

New law requires a manufacturer, distributor, or wholesaler to repurchase that inventory which can be verified as previously purchased from them, including all new and unused marine products of the current and immediate prior model or program year and new and unused parts on hand and held by the marine dealer on the date of termination of the contract. The manufacturer, distributor, or wholesaler shall pay an amount equivalent to the cost actually paid by the marine dealer, including discounts given and rebates paid per unit for any new, unused, undamaged, unaltered from original invoice and delivery, and complete marine product. The manufacturer, distributor, or wholesaler shall also pay an amount equal to the price paid by the marine dealer for any new, unused, and undamaged repair parts and accessories which are listed in the manufacturer's, distributor's, or wholesaler's prevailing parts list or were delivered in the past forty-eight months and are in their original packaging.

New law shall not require the repurchase from a marine dealer of:

- (1) Any repair part which has a limited storage life or is otherwise subject to deterioration.
- (2) Any single repair part which is priced and packaged as a set of two or more items.
- (3) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning.
- (4) Any inventory for which the marine dealer cannot provide good title, free and clear of all claims, liens, and encumbrances.
- (5) Any inventory which the marine dealer desires to keep, provided that the marine dealer has a contractual right to do so.
- (6) Any marine product which is not in new, unused, undamaged, and complete condition.
- (7) Any repair parts which are not in new, unused, and undamaged condition.
- (8) Any inventory which was ordered by the marine dealer on or after the date of receipt of the notification of termination of the franchise.
- (9) Any inventory which was acquired by the marine dealer from any source other than the manufacturer, distributor, or wholesaler, or its immediate predecessor.
- (10) Any marine product that has been altered substantially from original delivery.

New law provides that upon termination of the franchise, the marine dealer shall submit a final inventory of marine products and parts on hand to the manufacturer, distributor, or wholesaler by certified mail, return receipt requested, or commercial delivery service with verification of receipt. If a manufacturer, distributor, or wholesaler fails or refuses to repurchase within 30 days of the receipt of the inventory, without just cause, the manufacturer, distributor, or wholesaler shall be subjected to a penalty of the marine dealer's reasonable attorney fees, court costs, and interest on the inventory value of returnable marine products and parts required to be purchased computed at the rate of 1.5% per month from the 31st day, as long as such repurchase is not made.

New law prohibits a manufacturer, distributor, or wholesaler from assessing repurchase or restocking charges, freight charges except for return charges, reimbursement of interest charges paid, and any similar charges to a marine dealer.

New law provides that if there is a permanent closure by a marine dealer where a 90 day notice is given to the manufacturer, wholesaler, or distributor, the marine products and parts inventory shall be repurchased when a franchise is terminated as result of action by the manufacturer, wholesaler, or distributor.

New law provides that in the event of the death or incapacity of the marine dealer or the majority owner of a person operating as a marine dealer, the manufacturer, distributor, or wholesaler shall, at the option of the heirs if the marine dealer died intestate or the legatees or transferees under the terms of the deceased marine dealer's last will and testament if the

marine dealer died testate, repurchase the inventory from the heirs, legatees, or transferees as if the manufacturer, distributor, or wholesaler had terminated the contract, and the inventory repurchase provisions of new law shall apply. The heirs or legatees shall have until the end of the contract term or one year from the date of the death of the marine dealer or majority owner of a person, whichever comes first, to exercise their option pursuant to new law; provided, however, that nothing in new law shall require the repurchase of inventory if the heirs, legatees, or transferees and the manufacturer, distributor, or wholesaler enter into a new franchise to operate the marine dealership.

Effective January 1, 2011.

(Adds R.S. 32:1268.3; Repeals R.S. 32:1268.1(B))